



0000166146

RECEIVED

## BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

2015 SEP 15 P 2:43

DOCKETED

SUSAN BITTER SMITH - Chairman

SEP 15 2015

AZ CORP COMMISSION  
DOCKET CONTROL

BOB STUMP

BOB BURNS

DOUG LITTLE

TOM FORESE

DOCKETED BY

ORIGINAL

IN THE MATTER OF THE APPLICATION OF  
THE ARIZONA DEPARTMENT OF  
TRANSPORTATION TO INSTALL A NEW  
GRADE SEPARATED CROSSING AND FOR THE  
UNION PACIFIC RAILROAD COMPANY TO  
REMOVE AN EXISTING AT-GRADE CROSSING  
AT INTERSTATE 10 AND INA ROAD IN THE  
TOWN OF MARANA, PIMA COUNTY,  
ARIZONA, USDOT NO. 741 101G.

DOCKET NO. RR-03639A-15-0200

AMENDED  
PROCEDURAL ORDER  
(Schedules Hearing)

**BY THE COMMISSION:**

On June 17, 2015, the Arizona Department of Transportation ("ADOT") filed with the Arizona Corporation Commission ("Commission") a request for approval for ADOT to install a new grade separated crossing and for the Union Pacific Railroad Company ("Railroad") to remove an existing at-grade crossing at Interstate 10 ("I-10") and INA Road in the Town of Marana ("Town"), Pima County, Arizona at USDOT No. 741 101G ("Application").

On July 10, 2015, the Commission's Railroad Safety Section of the Safety Division ("Staff") filed a request for a procedural conference to address certain concerns of Staff prior to a hearing being scheduled.

On July 17, 2015, by Procedural Order, a procedural conference was scheduled on August 13, 2015.

On August 13, 2015, at the procedural conference, ADOT, the Railroad and Staff appeared with counsel to discuss Staff's concerns and the scheduling of the Application for hearing.

On August 14, 2015, by Procedural Order, the hearing on this matter was scheduled to commence on November 19, 2015, after public notice was given as ordered in the Procedural Order.

On August 27, 2015, ADOT filed a Notice of Errata ("Notice") stating that the Application contained typographical errors that needed to be corrected because the original Application incorrectly

1 referred to the City of Tucson ("City") as the location of the crossing and should have referred to the  
2 Town. The Notice had a corrected copy of the Application attached to it and now references the Town  
3 as the location of the crossing. ADOT's Notice further stated a copy of the corrected Application and  
4 the August 14, 2015, Procedural Order had been provided to the Town.

5 Accordingly, the Procedural Order which scheduled the proceeding should be amended to  
6 reflect ADOT's corrections.

7 Pursuant to A.A.C. R14-3-101, the Commission now issues this Procedural Order to govern the  
8 preparation and conduct of this proceeding.

9 IT IS THEREFORE ORDERED that the Application of the Arizona Department of  
10 Transportation shall be considered a request for it to install a new grade separated crossing and for the  
11 Railroad to remove an existing at-grade crossing pursuant to A.R.S. § 40-337, et seq.

12 IT IS FURTHER ORDERED that the Railroad shall be considered as the Respondent in this  
13 proceeding.

14 IT IS FURTHER ORDERED that the **hearing** on the application shall be held on **November**  
15 **19, 2015, at 10:00 a.m.**, or as soon thereafter as is practical, at the Commission's offices, 1200 West  
16 Washington Street, Hearing Room No. 2, Phoenix, Arizona.

17 IT IS FURTHER ORDERED that within ten business days of receipt of this Procedural Order,  
18 **the ARIZONA DEPARTMENT OF TRANSPORTATION SHALL PROVIDE THE**  
19 **RAILROAD AND ANY MUNICIPALITY OR INTERESTED PARTY** that may be affected by  
20 the Application with a copy of the application and this Procedural Order by certified mail.

21 IT IS FURTHER ORDERED that the Commission's Railroad Safety Section ("Staff") shall  
22 prepare a written **Staff Report and associated exhibits** to be presented at hearing and file copies of  
23 them with Docket Control on or before 4:00 p.m. on **October 23, 2015.**

24 IT IS FURTHER ORDERED that any **objections to the Staff Report and associated**  
25 **exhibits** shall be reduced to writing and filed with Docket Control on or before 4:00 p.m. on  
26 **November 2, 2015.**

27 IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C. R14-3-105,  
28 except that all motions to intervene must be filed on or before **October 16, 2015.**

IT IS FURTHER ORDERED that the Arizona Department of Transportation shall provide public notice of the hearing in this matter as corrected, in the following form and style:

**IN THE MATTER OF THE APPLICATION OF THE ARIZONA  
DEPARTMENT OF TRANSPORTATION TO INSTALL A NEW GRADE  
SEPARATED CROSSING AND FOR THE UNION PACIFIC RAILROAD  
COMPANY TO REMOVE AN EXISTING AT-GRADE CROSSING AT  
INTERSTATE 10 AND INA ROAD IN THE TOWN OF MARANA, PIMA  
COUNTY, ARIZONA, USDOT NO. 741 101G  
(DOCKET NO. RR-03639A-15-0200)**

On June 17, 2015, the Arizona Department of Transportation ("ADOT") filed with the Arizona Corporation Commission ("Commission") an application for approval for ADOT to install a new grade separated crossing and for the Union Pacific Railroad Company ("Railroad") to remove an existing at-grade crossing at Interstate 10 and Ina Road in the Town of Marana ("Town"), Pima County, Arizona at USDOT No. 741 101G.

The application is available for inspection during regular business hours at the Commission's offices, 1200 West Washington Street, Phoenix, Arizona, and on the internet via the Commission website ([www.azcc.gov](http://www.azcc.gov)) using the e-docket function.

The Commission will hold a hearing on this matter commencing on **November 19, 2015, at 10:00 a.m.**, at the Commission's offices, 1200 West Washington Street, Hearing Room No. 2, Phoenix, Arizona. Public comments will be taken on the first day of the hearing.

The law provides for an open public hearing at which, under appropriate circumstances, interested parties may intervene. Intervention shall be permitted to any person entitled by law to intervene and having a direct and substantial interest in the matter. Persons desiring to intervene must file a written motion to intervene with the Commission, which motion should be sent to Applicant or its counsel and to all parties of record, and which, at the minimum, shall contain the following:

1. The name, address, and telephone number of the proposed intervenor and of any party upon whom service of documents is to be made if different than the intervenor.
2. A short statement of the proposed intervenor's interest in the proceeding (e.g., a customer of Railroad, a neighboring property owner, a crossing user, etc.).
3. A statement certifying that a copy of the motion to intervene has been mailed to the Applicant or its counsel and to all parties of record in the case.

The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except that all motions to intervene must be filed on or before October 16, 2015. The granting of intervention, among other things, entitles a party to present sworn evidence at hearing and to cross-examine other witnesses. However, failure to intervene will not preclude any customer from appearing at the hearing and making a statement on such customer's own behalf.

If you have any questions about this application, you may contact the applicant at [insert telephone number]. If you wish to file written comments on the application or

1 want further information on intervention, you may write the Consumer Services Section  
2 of the Commission at 1200 West Washington Street, Phoenix, Arizona 85007, call 602-  
3 542-4251 or 1-800-222-7000, or appear at the hearing and make comment.

4 The Commission does not discriminate on the basis of disability in admission to its  
5 public meetings. Persons with a disability may request a reasonable accommodation  
6 such as a sign language interpreter, as well as request this document in an alternative  
7 format, by contacting Shaylin Bernal, ADA Coordinator, voice phone number  
8 602-542-3931, e-mail SABernal@azcc.gov. Requests should be made as early as  
9 possible to allow time to arrange the accommodation.

10 IT IS FURTHER ORDERED that the **Arizona Department of Transportation** shall cause the  
11 above notice to be published at least once in a newspaper of general circulation in the city/county where  
12 the crossing is located, with **publication to be completed no later than September 25, 2015.**

13 IT IS FURTHER ORDERED that notice shall be deemed complete upon the  
14 mailing/publication of same, notwithstanding the failure of an individual or entity to read or receive  
15 the notice.

16 IT IS FURTHER ORDERED that **THE ARIZONA DEPARTMENT OF**  
17 **TRANSPORTATION SHALL FILE CERTIFICATION OF NOTICE WITH THE**  
18 **COMMISSION'S DOCKET CONTROL AS SOON AS PRACTICABLE** after the  
19 mailing/publication of notice ordered herein has been completed.

20 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized  
21 Communications) applies to this proceeding as the matter is now set for public hearing

22 IT IS FURTHER ORDERED that all parties must comply with Rule 31, 38, and 42 of the  
23 Rules of the Arizona Supreme Court and A.R.S. § 40-243 with respect to practice of law and  
24 admission *pro hac vice*.

25 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance  
26 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the  
27 Rules of the Arizona Supreme Court). Representation before the Commission includes appearances at  
28 all hearings and procedural conferences, as well as all Open Meetings for which the matter is scheduled  
for discussion, unless counsel has previously been granted permission to withdraw by the  
Administrative Law Judge or the Commission.

1 IT IS FURTHER ORDERED that, as permitted under A.A.C. R14-3-107(B), each party to this  
2 matter may opt to receive service of all filings in this docket, including all filings by parties and all  
3 Procedural Orders and Recommended Opinions and Orders/Recommended Orders issued by the  
4 Commission's Hearing Division, via email sent to an email address provided by the party rather than  
5 via U.S. Mail. To exercise this option, a party shall:


- 6 1. Ensure that the party has a valid and active email address to which the party has regular  
7 and reliable access ("designated email address");
- 8 2. Complete a Consent to Email Service form, available on the Commission's website  
9 ([www.azcc.gov](http://www.azcc.gov));
- 10 3. File the original and 13 copies of the Consent to Email Service form with the  
11 Commission's Docket Control, also providing service to each party to the service list;
- 12 4. Send an email, containing the party's name and the docket number for this matter, to  
13 [HearingDivisionServicebyEmail@azcc.gov](mailto:HearingDivisionServicebyEmail@azcc.gov) from the designated email address, to allow  
14 the Hearing Division to verify the validity of the designated email address;
- 15 5. Understand and agree that service of a document on the party shall be complete upon  
16 the sending of an email containing the document to the designated email address,  
17 regardless of whether the party receives or reads the email containing the document;  
18 and
- 19 6. Understand and agree that the party will no longer receive service of filings in this  
20 matter through First Class U.S. Mail or any other form of hard-copy delivery, unless  
21 and until the party withdraws this consent through a filing made in this docket.

22 IT IS FURTHER ORDERED that a party's consent to email service shall not become effective  
23 until a Procedural Order is issued approving the use of email service for the party. The Procedural  
24 Order shall be issued only after the party has completed steps 1 through 4 above, and the Hearing  
25 Division has verified receipt of an email from the party's designated email address.

26 IT IS FURTHER ORDERED that a party's election to receive service of all filings in this matter  
27 via email does not change the requirement that all filings with the Commission's Docket Control must  
28 be made in hard copy and must include an original and 13 copies.

1 IT IS FURTHER ORDERED that the presiding Administrative Law Judge may rescind, alter,  
2 amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by  
3 ruling at hearing.

4 DATED this 15<sup>TH</sup> day of September, 2015.

5  
6   
7 MARC E. STERN  
ADMINISTRATIVE LAW JUDGE

8 Copies of the foregoing mailed/delivered  
9 this 15<sup>TH</sup> day of September, 2015 to:

10 Alex Popovici, Manager  
11 Industry & Public Projects  
12 UNION PACIFIC RAILROAD COMPANY  
13 631 South 7<sup>th</sup> Street  
14 Phoenix, AZ 85034-2203

15 W. Reed Campbell  
16 BEAUGUREAU, ZUKOWSKI  
17 & HANCOCK, P.C.  
18 302 East Coronado  
19 Phoenix, AZ 85004

20 Attorneys for Union Pacific Railroad Company

21 James R. Redpath  
22 Assistant Attorney General  
23 OFFICE OF THE ATTORNEY GENERAL  
24 1275 West Washington Street  
25 Phoenix, Arizona 85007

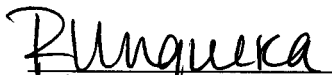
26 Sayeed M. Hani  
27 Railroad and Utility Coordinator  
28 ARIZONA DEPARTMENT  
OF TRANSPORTATION  
205 S. 17<sup>th</sup> Avenue, Room 357 MD 618E  
Phoenix, AZ 85007

Marana Town Attorney  
Town of Marana  
11555 W. Civic Center Dr.  
Marana, AZ 85653

Janice Alward, Chief Counsel  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007

Brian Lehman, Chief  
Railroad Safety Section of the Safety Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007

By:

  
Rebecca Unquera  
Assistant to Marc Stern